



# Environmental Defenders Office

## Accessing Government Information in lutruwita/Tasmania

*Disclaimer: This factsheet is a guide only and is designed to give readers a plain English overview of the law. It does not replace the need for professional legal advice in individual cases. To request free initial legal advice on a public interest environmental or planning law issue, please visit our [website](#).*

*While every effort has been made to ensure the information is accurate, the EDO does not accept any responsibility for any loss or damage resulting from any error in this factsheet or use of this work.*

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### What is this factsheet about?

The *Right to Information Act 2009* (Tas) (the **Act**) provides for access to information held by ministers, government departments and statutory bodies in lutruwita/Tasmania. This factsheet provides information about how to use the Act to access government information in lutruwita/Tasmania.

### Outline

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### Do you have the right to access government information?

The Tasmanian Government, its ministers, departments and statutory bodies (such as local councils), hold an enormous amount of information such as reports, policies, submissions, manuals, rules and correspondence.

Under the Act, you have a “legally enforceable right” to be provided with information that is in the possession of a public authority or minister, unless an exemption under the Act applies.

You can request information from:

- Any state government department

- Any state minister
- Any statutory body
- Local councils
- Any state or council-owned business (including water and electricity authorities)
- Any government business enterprise (such as Sustainable Timbers Tasmania)

N.B. For information held by Commonwealth Government agencies, the *Freedom of Information Act 1982* (Cth) applies. The [Commonwealth Ombudsman](#) has helpful information regarding this process.

## How do I access government information in lutruwita/Tasmania?

The Act provides that the information held by the government may be disclosed in one of four ways:

<b>Required Disclosure</b>	<ul style="list-style-type: none"> <li>• Information that a public authority or Minister must disclose according to the Act or any other such law (e.g., annual reports).</li> </ul>
<b>Routine Disclosure</b>	<ul style="list-style-type: none"> <li>• Information that the public authority or Minister disclosed voluntarily, not in relation to a particular enquiry (e.g., information about planning matters on a council website).</li> </ul>
<b>Active Disclosure</b>	<ul style="list-style-type: none"> <li>• Information disclosed in response to a particular request, but without any formal application under the Act (e.g., information provided after an informal request).</li> </ul>
<b>Assessed Disclosure</b>	<ul style="list-style-type: none"> <li>• Information provided in response to a formal application under the Act</li> </ul>

NB: The Act encourages government agencies to freely release information to the public. Making a formal application for assessed disclosure is supposed to be the option of last resort.

Visit: The website of [Ombudsman Tasmania](#) provides information about your rights under the Act, including guidelines. Knowledge of these guidelines will increase your chance of success when seeking an assessed disclosure.

If you are seeking information held by the government, you should follow the following steps.

### **Step 1 – review publicly available information**

If you are seeking general information on a particular topic, chances are that some relevant information will be provided on the relevant government agency’s website. You should refer to this information and use it to inform or refine any request you make for information. A directory of government departments can be found [here](#).

### **Step 2 – contact the relevant government agency**

If you cannot locate the information you are seeking on the government agency’s website, the next step is to contact the RTI officer in the relevant agency, seeking “active disclosure” of the information. This informal request can be in any form you wish – in person, over the phone, or by email – however, it is advised to confirm this request in writing.

This informal request may result in the agency providing the information requested, some of this information, or they may claim the information is exempt.

### **Step 3 – lodge a formal Right to Information (RTI) request**

If you are not satisfied with the response you got from the government agency to your request for active disclosure of the information, the next step is to lodge a formal application for an “assessed disclosure”. This is known as an RTI request. Further information is provided on these requests below.

N.B. Tip – keep a record of all your communication with government officers about your information request, both the informal first contact and the formal RTI request. This will be invaluable should you wish to review their decision.

## **How do I make a Right to Information (RTI) Request?**

A request for the “assessed disclosure” of information, or RTI request, is a formal, written request for information.

Each public authority should have an application form to be used when submitting an RTI request which will be available on their website. You may also phone the government agency and request a form to be sent to you.

If all or part of the information in your RTI request is refused, you must be provided with a written notice outlining the reasons for that refusal, the name of the person making the decision, and information about your rights to review the decision.

N.B. The Act requires that if requested, public authorities must assist you to make a valid RTI application. If you have any questions about the application form, contact the relevant RTI officer.

### **Time limits for assessments**

A government agency must provide its response to an RTI request as soon as practicable or otherwise within **20 working (i.e., business) days** of accepting the request. If an application needs to be refined and/or sent to another agency, the government agency should consult with the applicant about this within **10 working days** of accepting the request.

Time limits can be extended up to **20 working days** if the release of information requires consulting a third party (e.g. when personal information or a third party is involved).

### **Cost**

RTI applications will currently cost \$42.50, but this fee will increase each year.

The Act does give the public authority the discretion to waive the fee for those facing financial difficulty, or if it can be shown that the information will be used for a purpose that is of general public interest and benefit. The fee will also be waived for journalists or members of parliament acting in an official capacity.

## **What are the exemptions to the requirement to disclose information?**

### **Information automatically exempt from disclosure under the Act**

Certain information is automatically exempt from disclosure under the Act, including:

- The official record of deliberations or decisions made by the Governor, Executive Council, or Cabinet, including records prepared to be submitted to any of these bodies (see sections [25](#), [26](#) of the Act). Exemptions relating to cabinet information expire after 10 years.
- Internal briefing information of a Minister - defined as an opinion, advice, or recommendation prepared by an officer of a public authority or a minister - including a record of consultations between officers of public authorities and ministers (see section [27](#) of the Act). This briefing must be in connection with official business of the public authority, and in connection with the Minister's parliamentary duty. This exemption expires after 10 years.
- Information affecting national or state security, defence, or international relations. This includes information that would divulge the location of dangerous goods or substances (see section [29](#) of the Act).
- Information that by its disclosure would:

- o Prejudice an investigation into a breach of the law, the proper enforcement of the law, or the fair trial and impartial adjudication of a case
- o Disclose methods or procedures that prevent, detect, or investigate breaches of the law.
- o Endanger the life and safety of a person or increase the likelihood of harassment and discrimination against that person
- o Disclose information gathered for criminal intelligence; or
- o Hinder or delay an ongoing investigation (see section [30](#) of the Act).
- Information protected by legal professional privilege (see section [31](#) of the Act).
- Information relating to a closed meetings of a council (see section [32](#) of the Act). This exemption expires after 10 years.

### **Information that is exempt from disclosure subject to a test on public interest**

Certain information may not be disclosed if it meets certain criteria and is deemed that such disclosure is “contrary to the public interest”.

Information that may be deemed exempt, subject to the public interest test, includes:

- Information from other states or the Commonwealth (see section [34](#) of the Act).
- Information concerning internal deliberations within an agency in the course of a deliberative process (expires after 10 years) (see section [35](#) of the Act).
- Personal information of a person (see section [36](#) of the Act).
- Information relating to business affairs of a third party, or public authority, provided the information relates to trade secrets or would expose the third party to a competitive disadvantage (see sections [37](#), [38](#) of the Act).
- Information obtained in confidence (see section [39](#) of the Act).
- Information on procedures and criteria used in negotiations of public authority (see section [40](#) of the Act).
- Information likely to affect the State economy, in that disclosure may give a person an unfair advantage, or expose a person to an unfair disadvantage (see section [41](#) of the Act).
- Information likely to affect the cultural, heritage, and/or natural resources of the State. This is specifically related to instances where disclosure would:
  - o Threaten the survival of a rare or endangered species, or prejudice measures being taken to protect such a species; or
  - o Harm a site of scientific, cultural, or historical significance, or prejudice measure being taken to protect such a site (see section [42](#) of the Act).

## The Public Interest test

To decide whether disclosure would be contrary to the public interest, certain factors must be taken into consideration. These include:

- The general public need for government information to be accessible;
- whether the applicant is an Australian resident;
- whether the information is wrong or inaccurate;
- whether the information was provided by an external party and not required to be provided;
- whether the information relates to a person's business affairs and would cause harm to their competitive position, or if that information is generally available to the competitors of that person;
- whether disclosure would:
  - o contribute or hinder debate on a matter of public interest;
  - o inform persons about the reasons for a decision;
  - o provide contextual information to aid in the understanding of government decisions;
  - o inform the public about rules and practices in dealing with the public;
  - o enhance scrutiny of government decision-making processes thereby improving accountability and participation;
  - o enhance scrutiny of government administrative processes;
  - o promote or hinder equity and fair treatment of persons or corporations in their dealings with the government;
  - o promote or harm the administration of justice, economic development of the State, environment and/or ecology of the State, or the interests of an individual or group of individuals;
  - o prejudice the ability to obtain similar information in the future;
  - o be contrary to the security or good order of a prison or detention facility; or
  - o harm the business or financial interests of a public authority or any other person or organisation

## Matters irrelevant to the Public Interest test

Certain matters are irrelevant when assessing if disclosure of certain information would be contrary to the public interest. These are:

- The seniority of the person who is involved in the preparation of the document or who is the subject of the document;

- Whether disclosure would confuse the public, or the public might not readily understand any tentative quality of the information;
- That disclosure would cause a loss of confidence in the government;
- That disclosure might cause the applicant to misinterpret or misunderstand the information contained in the document for any reason, including an omission from the document.

N.B. Most of the exemptions to disclosure under the RTI Act exist to facilitate the proper workings of government. However, they can be used to conceal important information. If you believe this has occurred and are dissatisfied with the reason for non-disclosure provided by the government agency, you can seek a review of the decision.

### How can I seek the review of an RTI request decision?

If you are unhappy with the decision regarding your RTI request, you have the option of seeking a review of the decision. Further information about your rights of review should be outlined in the government agency decision.

Generally, you must first seek the review of an RTI decision by the head of the government agency before you can ask the Tasmanian Ombudsman to review the case.

#### Internal Review

You can apply to the “principal officer” of the agency for a review of the RTI request decision within **20 working days** of receiving the notice of the decision from the government agency. Depending on the agency in question, the principal officer may be:

- The head of the agency
- The Commissioner of Police
- General manager of the council
- The chief executive of the state or council-owned company
- The principal administrative officer

A new assessment must then be undertaken by a different employee than the one who assessed the first application.

#### External Review

If you are unhappy with the outcome of the internal review of the original RTI decision or have not received an internal review decision within **15 working days**, you may apply to

the [Tasmanian Ombudsman](#) for an external review. This requires an [application form](#) to be filled out, available on the Tasmanian Ombudsman website.

The Ombudsman's office will seek all information from the relevant public agency and assess agency's decision to determine whether it complies with the requirements of the Act and the relevant exemptions from disclosure. The Ombudsman's office will then determine whether the information should be released, in whole or in part, or whether to confirm the internal review decision.

The Ombudsman is not an advocate for either party and in the external review, assesses the information request and decision in consideration of the Act and its purpose.

N.B. While the Ombudsman must undertake any external review of an RTI decision as soon as reasonably practicable, there are currently long delays for external reviews by the Ombudsman's office. If you require the information urgently, write to the Ombudsman to ask for the external review to be expedited. You should include information about why you urgently need the information in your request.

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